

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROSA DELGADO,

Plaintiff,

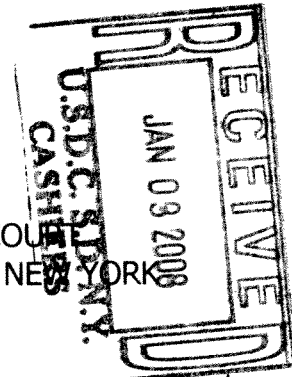
-against -

PATHMARK STORES, INC.,

Defendant.
-----X

TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN AND SOUTHERN DISTRICT OF NEW YORK

JUDGE RAKOFF
NOTICE OF REMOVAL



This Notice of Removal on behalf of defendant respectfully shows:

1. An action was commenced against defendant in the Supreme Court of the State of New York, Bronx County on July 23, 2007 which action is entitled above. According to the Complaint, plaintiff demands judgment in an amount "exceeding all jurisdictional limits". Copies of the Summons and Complaint are attached hereto and marked as ***Exhibit "A"***.
2. Defendant timely interposed its answer to the Complaint. A copy of the Answer is annexed as ***Exhibit "B"***.
3. On September 4, 2007, defendant served a CPLR §3017(c) "Request for a Supplemental Demand" requiring plaintiff to set forth the total damages to which he deems himself entitled. A copy of the "Request for Supplemental Demand" is annexed as ***Exhibit "C"***.

4. In response on December 17, 2007 plaintiff served a "response to Demand". A copy is annexed as ***Exhibit "D"***. In the response, plaintiff demands judgment against the defendant in the amount of \$1,000,000.00.

5. The above described action is now one in which this Court has original jurisdiction under the provisions of 28 U.S.C. 1332 and is one which may be removed to this Court by petitioner, pursuant to the provisions of 28 U.S.C. 1441 in that the matter in controversy exceeds the jurisdictional minimum for federal diversity actions exclusive of interest and costs.

6. Plaintiff was, at the time this action was commenced, and still is, a citizen of the State of New York and resides in Bronx County. Defendant was, at the time this action was commenced, and still is, a corporation organized under the laws of the State of Delaware and having its principal place of business in the State of New Jersey.

WHEREFORE, defendant requests that the action now pending against it in the Supreme Court of the State of New York, Bronx County, be removed therefrom to this Court.

Dated: New York, New York
January 3, 2008

Yours etc.,

KRAL, CLERKIN, REDMOND, RYAN,
PERRY & GIRVAN

Attorneys for Defendant
Office & P.O. Address
69 East Jericho Turnpike
Mineola, New York 11501
516-742-3470

BY: 

HENRY M. PRIMAVERA
A Member of the Firm

TO: WAYNE D. KURZNER, ESQ.
Attorneys for Plaintiff
555 Fifth Avenue, 14th Floor
New York, New York 10017
(212) 867-9149

ATTORNEY'S AFFIRMATION

STATE OF NEW YORK)

ss:

COUNTY OF NASSAU)

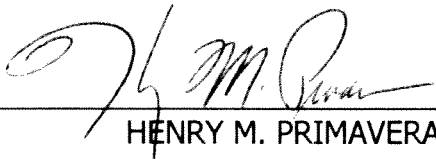
I, the undersigned, an attorney duly admitted to practice in the Courts of the State of New York, state:

That I am a member of the firm of KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, the attorneys of record for the defendant PATHMARK STORES, INC. in the within action;

I have read the foregoing NOTICE OF REMOVAL and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by the defendant is that the answering defendant maintains its principal place of business outside Nassau County.

The grounds of my belief as to all matters not stated upon my own knowledge are information, correspondence, conversations and a general investigation of the facts.

Dated: Mineola, New York
January 3, 2008


HENRY M. PRIMAVERA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ROSA DELGADO,

Plaintiff,

CV

-against-

AFFIDAVIT OF
SERVICE

PATHMARK STORES, INC.,

Defendant.

-----X
STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

LORETTA GRECO, being duly sworn, deposes and says:

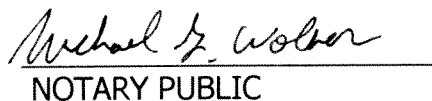
That your deponent is not a party to the action and is over the age of 18 years and on January 3, 2008 deponent served the within NOTICE OF REMOVAL upon the attorneys for the respective parties to this action as follows:

WAYNE D. KURZNER, ESQ.
Attorneys for Plaintiff
555 Fifth Avenue
New York, New York 10017
(212) 867-9149

the addresses designated by said attorneys for that purpose by dispatching a true copy thereof enclosed in a properly addressed wrapper into the custody of Federal Express for overnight delivery service, prior to the latest time designated by that service for overnight.


LORETTA GRECO

Sworn to before me this
January 3, 2008


NOTARY PUBLIC

MICHAEL GERARD WALKER
Notary Public, State Of New York
No. 02WA6088182
Qualified In Nassau County
Commission Expires March 3, 2011

ROSA DELGADO,

Plaintiff,

-against-

PATHMARK STORES, INC.,

Defendant.

NOTICE OF REMOVAL

KRAL, CLERKIN, REDMOND, RYAN
PATHMARK
PERRY & GIRVAN, LLP

Attorneys for

69 EAST JERICO TURNPIKE
MINEOLA, NEW YORK 11501
(516) 742-3470

§2103 (b) (5) Notice: Service of Papers by Electronic Means is Not Accepted

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated:

Signature

Print Signer's Name.....

Service of a copy of the within

is hereby admitted.

Dated:

.....
Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

☐

NOTICE OF
ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within-named Court on

20

☐

NOTICE OF
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the
Hon. _____, one of the judges of the within-named Court,
at _____
on _____ 20____, at _____ M.

Dated:

KRAL, CLERKIN, REDMOND, RYAN
PERRY & GIRVAN, LLP

Attorneys for

To:

69 EAST JERICO TURNPIKE
MINEOLA, NEW YORK 11501

Attorney(s) for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

ROSA DELGADO

Index # 17667-07
7/23/07
SUMMONS

Plaintiff,

- against -

PATHMARK STORES, INC.

Plaintiffs designate
Bronx County as
place of Trial.
The Basis of Venue is
Plaintiffs residence.

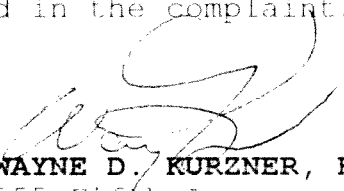
Defendant.

Plaintiffs reside at: 3209 Decatur Avenue #3F
Bronx, New York 10467

TO THE ABOVE NAMED DEFENDANT(S):

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, of, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
July , 2007


WAYNE D. KURZNER, ESQ.
555 Fifth Avenue
14th floor
New York, New York 10017
(212) 867-9149

DEFENDANT'S ADDRESS:

Pathmark Stores, Inc. - 1720 Eastchester Road, Bronx, NY 10461

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

ROSA DELGADO,

Plaintiff

- Plaintiff -

PATHMARK STORES, INC.

Defendant.

VOLUME 1
COMPLAINT

The plaintiff, by her attorney, Wayne S. Kuznetz, complaining of the defendants, respectfully states and alleges the following:

FIRST: That at all times hereinafter mentioned the plaintiff, ROSA DELGADO, was and still is a resident of the County of Bronx, City and State of New York.

SECOND: Upon information and belief that at all times hereinafter mentioned, the defendant, PATHMARK STORES, INC., was a domestic corporation organized and existing under and by virtue of the laws of the State of New York.

THIRD: Upon information and belief that at all times hereinafter mentioned, the defendant, PATHMARK STORES, INC., was a foreign corporation duly authorized and doing business in the State of New York.

FOURTH: That at all times hereinafter mentioned, defendant, PATHMARK STORES, INC., was doing business as a supermarket at 1720 Eastchester Road, in the County of Bronx, City and State of New York.

FIFTH: That at all times hereinafter mentioned, defendant, PATHMARK STORES, INC., its agents, servants, and/or employees, owned, operated, maintained, managed and controlled a supermarket at 1770 Eastchester Road in the County of Bronx, City and State of New York.

SIXTH: That at all times hereinafter mentioned as a result of the negligence of the defendant herein, its agents, servants and/or employees, there was caused to be, become, and remain a liquid substance on the floor in and around the aforesaid supermarket.

SEVENTH: That the supermarket and its surrounding areas was and still is a public area in continuous use by consumers and other persons walking to and from their respective destinations.

EIGHTH: That on May 26, 2007, the plaintiff was lawfully upon said premises and surrounding areas.

NINTH: That on May 26, 2007, while said plaintiff was lawfully situated upon said premises and surrounding areas she was caused to slip and fall.

TENTH: That as a result thereof, she suffered serious injury and protracted pain and suffering.

ELEVENTH: That as a result of the aforesaid, the plaintiff has suffered and been damaged in a sum exceeding all jurisdictional limits.

WHEREFORE, plaintiff demands judgment against defendants in a sum exceeding all jurisdictional limits, together with the costs and disbursements of this action.

DATE: New York, New York
July 1, 2007

WAYNE L. ROSENBERG
111 FIFTH AVENUE
10TH FLOOR
NEW YORK, NY 10017
212-465-1114

ATTORNEY'S VERIFICATION

WAYNE KURZNER, an attorney duly admitted and licensed to practice law in the Courts of the State of New York alleges:

That I am the attorney for the plaintiff in the within action.

That I have read the foregoing Summons and Verified Complaint and know the contents thereof.

That the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters therein stated to be alleged on information and belief, he believes them to be true.

That the reason this verification is made by your affirmant and not by the plaintiff is because plaintiff does not reside within the county wherein your affirmant maintains his office.

That the sources of affirmant's information and the grounds for belief are based upon correspondence and reports of investigation in the files of affirmant's firm.

DATED: New York, New York
July , 2007



WAYNE D. KURZNER

Plaintiff,
-against-
PATHMARK STORES, INC.

Defendant.

SUMMONS AND VERIFIED COMPLAINT

WAYNE D. KURZNER

Attorney for

Plaintiff

Office and Post Office Address, Telephone

555 Fifth Avenue

14th Floor

NEW YORK, NEW YORK 10017

(212) 867-9149

FAX NO. (212) 986-5316

To

Signature (Rule 130-1.1-a)

Attorney(s) for

Print name beneath

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

Please take notice

☐ NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

☐ NOTICE OF SETTLEMENT

that an order
settlement to the HON.
of the within named court, at
on

of which the within is a true copy will be presented for
one of the judges

at

M

Dated,

Yours, etc.

WAYNE D. KURZNER

Attorney for

To

Attorney(s) for

Office and Post Office Address

555 Fifth Avenue

14th Floor

NEW YORK, NEW YORK 10017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

=====X

ROSA DELGADO,

Plaintiff,

Index #17667/07

-against-

VERIFIED ANSWER

PATHMARK STORES, INC.,

Defendant.

=====X

Defendant, PATHMARK STORES, INC., by its attorneys, KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, answering the Complaint of the plaintiff, sets forth upon information and belief the following:

1. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "FIRST" and "EIGHTH" of the Complaint.
2. Defendant denies each and every allegation contained in paragraph "SECOND", "SIXTH", "NINTH", "TENTH" and "ELEVENTH" of the Complaint.
3. Defendant denies each and every allegation contained in paragraph "FIFTH" except admits that PATHMARK STORES, INC. operated, maintained, managed and controlled a supermarket at 1720 Eastchester Road in the County of Bronx, City and State of New York.

4. Defendant denies each and every allegation contained in paragraph "SEVENTH" in the form alleged and respectfully refers all question of law to the determination of the court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

5. Upon information and belief, the injuries sustained by plaintiff and any alleged damages were caused in whole or in part, or were contributed to by reason of the negligence, want of care, carelessness, assumption or risk, or other culpable conduct on the part of the plaintiff and by reason of the foregoing, the damages allegedly attributable or otherwise recoverable herein should be reduced proportionately.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

6. That the plaintiff could, with due diligence, have obtained personal jurisdiction over tortfeasors not a party to this lawsuit. Therefore, the culpability of these missing or absent tortfeasors may be computed into the apportionment of total culpability causing the subject occurrence.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

7. These answering defendants' equitable shares of the total liability assigned to all persons liable, if any, if fifty percent (50%) or less.

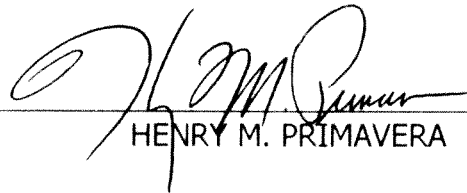
WHEREFORE, the defendant PATHMARK STORES, INC. demand judgment dismissing plaintiff's Verified Complaint together with the costs and disbursements of this action.

Dated: Mineola, New York
September 4, 2007

Yours, etc.,

KRAL, CLERKIN, REDMOND, RYAN,
PERRY & GIRVAN, LLP
Attorneys for Defendant
Office & P.O. Address
69 East Jericho Turnpike
Mineola, New York 11501
(516) 742-3470

BY: _____



HENRY M. PRIMAVERA

TO: WAYNE D. KURZNER, ESQ.
Attorneys for Plaintiff
555 Fifth Avenue
New York, New York 10017
(212) 867-9149

STATE OF NEW YORK)
SS:
COUNTY OF NASSAU)


I, the undersigned, an attorney duly admitted to practice in the Courts of the State of New York, state:

That I am a member of the firm of KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, LLP, the attorneys of record for the defendant PATHMARK STORES, INC. in the within action;

I have read the foregoing Answer to Verified Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by the defendant is that the answering defendant maintains its principal place of business outside Nassau County.

The grounds of my belief as to all matters not stated upon my own knowledge are information, correspondence, conversations and a general investigation of the facts.

Dated: Mineola, New York
September 4, 2007


HENRY M. PRIMAVERA

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X

ROSA DELGADO,

Plaintiff,

-against-

PATHMARK STORES, INC.,

Defendant.

-----X

Index #17667/07

**CPLR Section 3017(c)
REQUEST FOR A
SUPPLEMENTAL DEMAND**

COUNSELORS:

PLEASE TAKE NOTICE, that pursuant to CPLR Section 3017(c) defendant, PATHMARK STORES, INC., hereby demand that within fifteen (15) days plaintiff, ROSA DELGADO, provide a Supplemental Demand setting forth the total damages to which plaintiff deems herself entitled.

PLEASE TAKE FURTHER NOTICE, that in the event the Supplemental Demand is not served within fifteen (15) days of this request, defendant shall move for an Order requiring plaintiff's compliance.

Dated: Mineola, New York
September 4, 2007

Yours, etc.,

KRAL, CLERKIN, REDMOND, RYAN,
PERRY & GIRVAN, LLP

Attorneys for Defendant

Office & P.O. Address

69 East Jericho Turnpike

Mineola, New York 11501

(516) 742-3470

BY: 

HENRY M. PRIMAVERA

TO: WAYNE D. KURZNER, ESQ.

Attorneys for Plaintiff

555 Fifth Avenue

New York, New York 10017

(212) 867-9149

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
ROSA DELGADO,

Plaintiff,

Index #17667/07

-against-

Affidavit of Service

PATHMARK STORES, INC.,

Defendant.
-----X

STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

LORETTA GRECO, being duly sworn, deposes and says: That your deponent is not a party to the action and is over the age of 18 years old and on September 4, 2007 served the within VERIFIED ANSWER, DEMAND FOR A VERIFIED BILL OF PARTICULARS, COMBINED DEMAND, NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION AND SUPPLEMENTAL DEMAND upon the attorneys for the respective parties to this action as follows:

TO: WAYNE D. KURZNER, ESQ.
Attorneys for Plaintiff
555 Fifth Avenue
New York, New York 10017
(212) 867-9149

the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


LORETTA GRECO

Sworn to before me this 4th
September, 2007


NOTARY PUBLIC

MARY ANNE INTINTOLI
Notary Public, State of New York
No. 4769553
Qualified in Nassau County
Commission Expires August 31, 2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
ROSA DELGADO,

Plaintiffs,
-against-

RESPONSE TO DEMAND

PATHMARK STORES, INC.,

Index #:17667/07

Defendants.
-----X

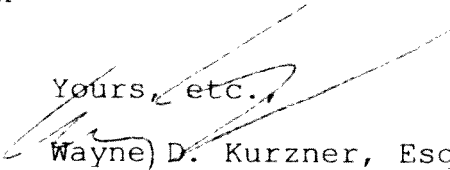
The plaintiff requests the total sum of ONE MILLION (\$1,000,000.00)
DOLLARS.


WAYNE D. KURZNER

TO:

KRAL, CLERKIN, REDMOND & RYAN
69 EAST JERICHO TURNPIKE
MINEOLA, NY 11501
(914) 285-8500

DATED: New York, New York
DECEMBER 17, 2007

Yours, etc. 

Wayne D. Kurzner, Esq.
Attorney for Plaintiff
555 Fifth Avenue
14th Floor
New York, New York 10017
212-867-9149

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

ESTELLE JONES, being duly sworn, deposes and says:
deponent is not a party to the action, is over 18 years of age and
resides at New York, New York.


On the 17TH day of December, 2007 deponent served the
within DISCOVERY RESPONSE, UPON

KRAL CLERKIN REDMOND RYAN
PERRY & CIRVAN, LLP
69 EAST JERICHO TURNPIKE
MINEOLA, NEW YORK 11501

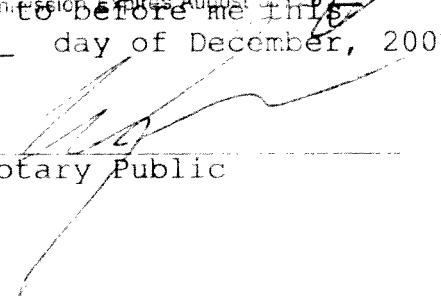
the addresses designated by said attorneys for the purpose by
depositing a true copy of same in a post-paid properly addressed
wrapper, in--a post office--official depository under the exclusive
care and custody of the United States Postal Service within the
State of New York.

WAYNE D. KURZNER
Notary Public, State of New York
No. 4760234

Qualified in New York County
Commission Expires August 31, 2010
Sworn to before me this
17 day of December, 2007



ESTELLE JONES



Notary Public

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF BRONX

ROSA DELGADO,

Plaintiff,

-against-

PATHMARK STORES, INC.

Defendant.

Plaintiff